

DISTRICT EDUCATIONAL PROFESSIONAL SERVICES AGREEMENT

This educational professional services agreement (this “Agreement”) is dated September 11, 2018 and is entered into between TEACH FOR AMERICA, INC. (“Teach For America”), a Connecticut non-profit with regional office located at 1110 Main St., Suite 100 Cincinnati, Oh 45202 and Newport Independent Schools, a political subdivision of the state of Kentucky (“School District”) (each individually “a Party” and collectively “the Parties”).

RECITALS

WHEREAS, Teach For America is a national leader in recruiting, selecting, training and providing ongoing professional development to individuals committed to closing the achievement gap by serving as effective classroom teachers specifically equipped to enhance student achievement in under-resourced school systems.

WHEREAS, Newport Independent Schools seeks to recruit new teachers who are trained to lead students to academic achievement and to equip such teachers with ongoing professional development and support to further develop and sustain their professional practice.

NOW THEREFORE, School District and Teach For America agree to be bound by the terms and conditions of this Agreement.

AGREEMENT

I. TEACHER CANDIDATE RECRUITMENT, SELECTION AND HIRING:

School District Responsibilities:

A. Hiring Commitment.

- i. Teach For America will use its reasonable efforts to provide the number of teacher candidates for employment with School District (“Teachers”) set forth in Exhibit A (the “Agreed Number”), attached and hereby incorporated hereto, but Teach For America cannot and does not guarantee its ability to provide the full Agreed Number of Teachers to School District and the failure of Teach For

America to provide the full Agreed Number of Teachers for any academic year shall not constitute a breach of this Agreement for any purpose whatsoever.

- ii. Whether or not Teach For America is able to provide the full Agreed Number, School District shall consider for hire each Teacher provided by Teach For America who meets the district eligibility requirements.
- iii. Any Teach For America Teacher hired by the School District shall be hired as the classroom teacher of record and not for substitute, auxiliary, resource or teacher's aide positions.
- iv. Teach For America Teachers will be hired by School District for vacancies across the full range of grades and subject matters and not restricted or limited to so-called "critical" or "shortage" subjects or grade level vacancies.
- v. School District and Teach For America shall collaborate in good faith to identify individual schools within School District appropriate for Teachers. In order to be considered an appropriate school (a "Partner School") for placement of a Teacher, [(i)] the school's student population must be considered high poverty relative to the student population elsewhere in the district or that seventy percent or more of the school's student population receives free or reduced lunch. To the extent reasonably practicable, School District will employ two or more Teachers per individual Partner School.

B. Hiring Process.

- i. School District and Teach For America will collaborate in good faith to facilitate the efficient hiring of individual Teachers, in accordance with a mutually agreed upon hiring process.
- ii. School District shall use its reasonable efforts to hire Teachers in a timely manner throughout the spring and summer of the applicable academic school year, provided that School District shall employ Teachers no later than 7 days before the first day of the academic school year. School District agrees that where possible, Teach For America shall be informed of individual Teacher's grade and subject level assignments prior to the start of their Pre-Service Training (as described below).

- iii. Subject to its obligations under pre-existing collective bargaining agreements, contracts, or applicable law, School District will offer alternative employment to any Teacher who is not employed by the first day of the academic school year. “Alternative employment” includes, but is not limited to substitute teaching positions, “pool” teaching positions, classroom aides or other temporary category of employment available within School to individuals with teaching credentials. The purpose of an alternative employment placement is to enable the individual Teacher to obtain a salary until such time as School District can secure permanent employment as a full-time classroom teacher of record.

II. TEACHER CANDIDATE RECRUITMENT, SELECTION AND HIRING:

Teach For America Responsibilities:

- A. Candidate Recruitment and Selection. Teach For America will recruit, select for participation in the Teach For America program, and present to the School District for employment Teachers from a broad range of academic majors and career fields. Teach For America will use reasonable efforts to recruit Teachers from diverse backgrounds. In connection with the foregoing, Teach For America will not knowingly engage in any unlawful acts of discrimination in its recruiting or selection of candidates.
- B. Pre-Service Training. Prior to entering the classroom, all Teachers will undergo pre-service training at Teach For America Institutes, which are designed and delivered by Teach For America in order to prepare Teachers for this work.
- C. Highly Qualified Status. Teach For America will provide the described pre-service training to Teachers presented to School District for the purpose of ensuring that such Teachers meet the “highly qualified” teacher requirements set forth in the federal Every Student Succeeds Act and applicable state regulations (together, the “Requirements”). For purposes of this Section E, only those Requirements in effect at the time that the Teacher is offered employment by School District will be applicable.

III. TEACHER PLACEMENT AND PROFESSIONAL DEVELOPMENT COMMITMENTS:
School District Responsibilities

A. Employment Status.

- i. Every Teacher employed by School District as described in this Agreement shall be a full-time employee of School District with all of the rights, responsibilities and legal protections attendant to that status and not an employee of Teach For America. For the avoidance of doubt, in the event School District is an “at-will” employer nothing in this Agreement shall be construed to grant additional employment rights to individual Teachers.
- ii. Nothing in this Agreement shall be construed to permit Teach For America to interfere in the employment relationship between School District and an employed Teacher.
- iii. Nothing in this Agreement shall be construed to permit Teach For America to function as the representative of any Teacher absent the express agreement among the parties and the Teacher that Teach For America may operate in such capacity in a particular circumstance.
- iv. Nothing in this Agreement shall be construed to imply that an employer-employee relationship exists between Teach For America and any individual Teacher.
- v. Nothing in this Agreement shall be construed to make Teach For America a party to any employment agreement between the School District and the Teacher.
- vi. Nothing in this Agreement shall be construed to imply that any Teacher employed by the School District as described in this Agreement is an agent of Teach For America or has any right or authority to create or assume any obligation of any kind, express or implied, on behalf of Teach For America or bind Teach For America in any respect whatsoever.
- vii. Subject to its obligations under pre-existing labor agreements, applicable municipal and state laws and regulations, and/or its policies and procedures,

School District acknowledges that there is an expectation that Teacher(s) shall be employed for two years, provided that the Teacher remains an employee in good standing.

- viii. Notwithstanding the foregoing, School District may continue to employ individual Teacher(s) beyond the two-year commitment by mutual agreement between School District and such Teacher(s).

B. Compensation of Teachers. School District shall provide to every Teacher employed by School District pursuant to this Agreement the same salary and benefits (including, as applicable, health, dental, vision and retirement) as are provided to other teachers employed by School District who are similarly situated from the standpoint of certification status, seniority and any other factors routinely used by School District in making such decisions. Notwithstanding the above, Teach For America acknowledges it exercises no control of the salary and benefits offered to Teachers per this Agreement.

C. Reductions in Force. Subject to its obligations under pre-existing labor agreements and applicable municipal and state laws and regulations, School District shall use reasonable efforts not to terminate any employed Teacher from his/her teaching position in the event of a reduction in force (RIF), layoffs, “leveling” or other elimination or consolidation of teaching positions within School District. School District shall treat any Teacher employed in connection with this Agreement whose teaching position is eliminated at least as favorably as other teachers with the same job classification, certification status, and/or seniority rights. For the avoidance of doubt, this obligation is limited and controlled by any obligations that the School District has under any pre-existing collective bargaining agreements and applicable municipal and state laws and regulations.

IV. TEACHER PLACEMENT AND PROFESSIONAL DEVELOPMENT COMMITMENTS: Teach For America Responsibilities

A. Professional Development and On-Line Data Storage Services.

- i. During the course of the academic year, Teach For America shall provide on behalf of School District various professional development services and activities for participating Teachers as well as on-line data storage services to facilitate such professional development services (the “Professional Development and Data Storage Services”). These services may include periodic classroom observations by regional program staff, videotaping of instruction with review of instructional technique, co-investigative discussions to facilitate Teacher capacity for self-reflection and evaluation of instructional practice using student achievement data, and content area/grade-level workshops facilitated by veteran teachers. In addition, Teach For America shall facilitate Teacher access to an assortment of resources including sample lesson plans, assessments, grade tracking systems, and content area/grade level instructional materials. These professional development services will be available to all Teachers during their first two years in the classroom. To facilitate provision of these professional development services, Teach For America may provide on-line data storage services, including transfer and storage of identifiable student information on Teach For America’s proprietary software and servers.
- ii. To facilitate provision of the Professional Development and Data Storage Services, School District may disclose to Teach For America student-related records and personally identifiable information contained in such records (collectively, “Student Records”). Pursuant to its obligations under the Family Educational Rights and Privacy Act, 20 USC §1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time (“FERPA”), School District hereby acknowledges that, in the course of providing the Professional Development and Data Storage Services, Teach For America is a school official with legitimate educational interests in the Student Records disclosed to Teach For America, pursuant to 34 CFR §99.31(a)(1).
- iii. Teach For America agrees to use, maintain, and redisclose Student Records only in accordance with the requirements of FERPA. Without limiting the foregoing, Teach For America agrees that it shall not maintain, use, disclose, or allow access to Student Records except as permitted by this Agreement or as

otherwise authorized by the School District or by law, and will use Student Records disclosed by the School District only for the purposes for which such disclosure was made.

- iv. School District will provide Teach For America any state, district, or school based assessment results for teachers covered under this agreement in a timely fashion as requested.
- v. School District acknowledges that Teach For America may re-disclose Student Records to third parties pursuant to Teach For America's provision of the Professional Development and Data Storage Services, as provided in 34 C.F.R. § 99.33(b), provided that Teach For America shall, in advance, provide to School District the names of such parties and a brief description of such parties' legitimate educational interest in receiving such information.
- vi. Pursuant to 34 CFR § 99.7(a)(3)(iii), School District shall include, in its annual notification of rights under FERPA, criteria that qualify Teach For America, in its capacity as a provider of professional development and data storage services, as a school official with a legitimate educational interest.

B. Credentialing Services.

- i. Teach For America shall facilitate the enrollment of individual Teachers in an alternative certification/licensure program that will enable the individual Teacher to obtain appropriate credentials to be a classroom teacher of record.
- ii. Individual Teachers are responsible for completing all credential requirements, including required coursework through an alternative licensure program.
- iii. Teach For America shall not be responsible for, and shall not be in breach of any provision of this Agreement, in the event of any failure by an individual Teacher to fulfill his/her obligations to maintain his/her teaching credentials.

V. GENERAL PROVISIONS

A. Fees-for-Service.

- i. School District shall pay Teach For America an annual fee for each Teacher employed under this Agreement to defray expenses Teach For America incurred in recruiting, selecting, providing pre-service training and continuing professional development services to the Teachers employed by School District under this agreement. School District agrees that all payments for fees shall be in the form of check delivered to Teach For America or wire transfer to an account designated by Teach For America in writing.
- ii. With respect to each Teacher whose employment by School District is to commence in the 2019 academic year, School District shall pay Teach For America an annual amount of \$5000 for each year in which such Teacher is employed by School District, up to two years from the date such employment is to commence; and
- iii. With respect to each Teacher whose employment by School District is to commence in the 2020 academic year, School District shall pay Teach For America an annual amount of \$5000 for each year in which such Teacher is employed by School District, up to two years from the date such employment is to commence; and
- iv. With respect to each Teacher whose employment by School District is to commence in the 2021 academic year, School District shall pay Teach For America an annual amount of \$5000 for each year in which such Teacher is employed by School District, up to two years from the date such employment is to commence.

B. Non-refund. Teach For America shall have no obligation to refund to School District any amount paid by School District in respect of any Teacher for any reason whatsoever. For the avoidance of doubt, School District will be invoiced fees for each of the individual Teacher(s) initially employed by the School District.

C. Invoicing and Payment. Teach For America will invoice School District for all amounts due hereunder with respect to any academic year within thirty (30) days of the

start of the academic school year, provided that Teach For America's failure to timely do so, will not constitute a waiver of any of Teach For America's rights hereunder or constitute a breach by Teach For America of this Agreement. For the avoidance of doubt, School District shall pay all invoices within 90 days of the date of the invoice.

D. Term. The term of this Agreement will cover the 2019 cohort of Teachers for the 2019 and 2020 academic years. It will also cover the 2020 cohort of Teachers for the 2020 and 2021 academic years. It will also cover the 2021 cohort of Teachers for the 2021 and 2022 academic years. This Agreement will expire on the last school day of the final cohort's second academic year 2022, and may be renewed at the end of the term on the same or substantial similar terms by mutual agreement of the parties.

E. Termination. This Agreement may be terminated as follows:

- i. at any time by mutual written agreement of the Parties;
- ii. by either Party, upon thirty (30) days' prior written notice to the other Party, provided that the terminating Party provides that notice no later than 120 days prior to the end of the current academic year; or
- iii. by either Party upon written notice to the other Party in the event of a material breach of this Agreement that is incapable of being cured or, if capable of being cured, is not cured within thirty (30) days following receipt by the breaching Party of written notice of such breach from the non-breaching Party.

F. Effect of Termination. Except as otherwise specifically provided, if this Agreement expires or is terminated by either party, it shall become void and of no effect without liability of any party (or any of its directors, officers, employees, agents, representatives or advisors) to the other parties; provided that no such expiration or termination shall relieve any party of any liability asserted by such party under this Agreement prior to or within 6 months of such termination. In the event that this Agreement expires or is terminated by either party, Sections regarding the Compensation of Teachers, and Reductions in Force shall survive and will remain in effect until such time as there are

no Teachers in their second year of employment in School District. Sections related to the Effect of Termination, No Warranty, Mutual Indemnification and Limitation of Liability shall survive the expiration or termination of this Agreement indefinitely. Additionally, Teach For America will be entitled to all outstanding amounts due up to the date of expiration or termination.

G. No Warranty. School District hereby agrees and acknowledges that Teach For America does not make and has not made any representation and warranty (express or implied) as to the fitness of any Teacher presented or provided by Teach For America and School District shall indemnify and hold harmless the TFA Indemnities (as defined below in the Section related to Mutual Indemnification) from and against any Losses (also defined below in the same Section below) resulting from any claim related to the services provided by Teach For America, including, but not limited to, claims that any Teacher presented or provided by Teach For America was unfit for the position for which he or she was hired by School District.

H. Mutual Indemnification.

- i. Teach For America shall indemnify and hold harmless the School District and its officers, directors, employees and agents (the "School District Indemnitees") from and against any and all Losses to which such School District Indemnitee may become subject arising out of a breach of this Agreement by Teach For America to School District of services hereunder, except to the extent such Losses result from the willful misconduct or gross negligence of such School District Indemnitee.
- ii. To the extent permitted by applicable state laws and regulations, School District shall indemnify and hold harmless Teach For America and its officers, directors, employees and agents (the "TFA Indemnitees") from and against any and all losses, liabilities, claims, damages, costs and expenses (including attorneys' fees) ("Losses") to which such TFA Indemnitee may become subject arising out of the provision by Teach For America to School District of services hereunder (including without limitation the designation of Teachers), except to

the extent such Losses result from the willful misconduct or gross negligence of such TFA Indemnatee.

- iii. To the extent permitted by applicable state laws and regulations, neither Party shall have any liability to the other Party with respect to Losses asserted after 6 months of the expiration or termination of this Agreement.

- I. Limitation of Liability. Neither Teach For America nor any of its officers, directors, employees or agents shall be liable to School District or any individual Partner School of School District for any Loss incurred by School District or such individual Partner School (as defined in Hiring Commitment Section, above) in connection with the matters to which this Agreement relates, except for a Loss resulting from willful misconduct or gross negligence on the part of Teach For America; provided that in no event shall Teach For America and its officers, directors, employees and agents have any liability to School District or any such individual Partner School in connection with the matters to which this Agreement relates in excess of the aggregate amount of payments made to Teach For America by School District pursuant to this Agreement or in connection with any Loss of which School District is primarily culpable.
- J. Surveys. School District acknowledges that Teach For America may survey individual constituents, teachers, etc. at the partner school sites regarding its programming and professional development of Teachers in the classroom.
- K. Amendment/Modification. No amendment or modification of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and signed by each party.
- L. Non-Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by either party without the prior written consent of the other party, and any such assignment that is not consented to shall be null and void.

- M. Counterparts. This Agreement may be executed in any number of counterparts (including by electronic transmission), each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. The execution of this Agreement by any Party shall not become effective until counterparts have been executed by all Parties.
- N. Construction. The headings of Sections contained in this Agreement are for convenience only, and they do not, expressly or by implication, limit, define, extend, or construe the terms or provisions of the Sections of this Agreement. Any reference in this Agreement to gender includes all genders. Further, except where expressly specified to the contrary, the words “include,” “including,” and “such as” in this Agreement should be read to mean “include without limitation.”
- O. Governing Law. This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Kentucky without regard to the conflict of laws provisions of such State. Any legal suit, action, or proceeding relating to this Agreement must be instituted in the federal or state courts located in Kentucky. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any suit, action or proceeding.
- P. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.
- Q. Notices. Any notices to either Party under this Agreement shall be in writing and delivered by hand or sent by nationally recognized messenger service, or by registered

or certified mail, return receipt requested, to the addresses set forth below or to such other address as that Party may hereafter designate by notice. Notice shall be effective when received, which shall be no greater than one (1) business day after being sent by a nationally recognized messenger service or three days after being sent by mail.

DISTRICT CONTACT

Name: Kelly Middleton
Title: Superintendent
Address: 30 West 8th St. Newport, KY 41071
Email: kelly.middleton@newport.kyschools.us

TEACH FOR AMERICA:

Name: Benjamin Lindy
Title: Executive Director
Address: 1110 Main St. Ste 100
Cincinnati, OH 45202
Email: Benjamin.Lindy@teachforamerica.org

With an electronic copy to:

Name: TFA Legal Affairs
Email: LegalAffairs@teachforamerica.org
**Send only notices related to breach of contract and indemnity.*

- R. Waiver. A waiver or a breach or default under this Agreement shall not be a waiver of any other subsequent breach or default. The failure or delay in enforcing compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition unless such term or condition is expressly waived in writing.
- S. Entire Agreement/Authority/Binding. This Agreement is the complete and exclusive statement of the agreement between the parties as to the subject matter hereof and supersedes all communications between the parties related to the subject matter of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of School District and Teach For America has caused its duly authorized representative to sign this Agreement in the space provided below.

Newport Independent School

By: _____
Name: Kelly Middleton
Address: 30 West 8th St.
Newport, KY 41071

Teach For America

By: _____
Name: Ben Lindy
Title: Executive Director
1110 Main St. Ste
Address: 100
Cincinnati, OH
45202

Teach For America

Contract Owner Attestation:

☐ This contract required legal changes to the required terms and was reviewed/approved by TFA Legal Affairs in this final form.

☐ This contract did not require legal changes and was not reviewed by TFA Legal Affairs.

Name: _____
Title: _____

EXHIBIT A

Grade Level	Agreed Number of Teachers	Academic Years of Employment
Elementary	0-2	2019-2020, 2020-2021, 2021-2022
Middle School	0-3	2019-2020, 2020-2021, 2021-2022
High School	0-4	2019-2020, 2020-2021, 2021-2022

Fees shall be determined by the actual number of Teachers hired under this Agreement.

- i. Each cohort of Teachers employed pursuant to this clause is in addition to Teachers from prior cohorts employed by the School District and who are returning for their second year of employment.
- ii. If Teach For America provides School District with a number of Teachers that is lower than the Agreed Number, the number of Teacher candidates provided will constitute the Agreed Number for purposes of determining any fees that the School District owes Teach For America.
- iii. In the event that Teach For America supplies the School District with any Teachers above the Agreed Number, School District agrees to pay the agreed upon fees for the additional Teachers.